

STATE OF TENNESSEE,)
)
 Plaintiff,)
)
 v.) **No. _____**
)
 LA VISTA, LLC, a Tennessee Limited)
 Liability Company, d/b/a LA QUINTA,)
)
 Defendant.)

Plaintiff, the State of Tennessee, by and through Paul G. Summers, the Attorney General, at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, La Vista, LLC, a Tennessee Limited Liability Company, d/b/a La Quinta ("La Quinta"), as evidenced by their signatures, do consent to the entry of this Judgment and its provisions. Defendant enters into this Judgment to avoid the time and expense associated with litigation. This is an Agreed Final Judgment ("Order") for which execution may issue.

This Order only resolves matters set forth in the State's Complaint. Defendant hereby accepts and expressly waives any defect in connection with service of process issued on the Defendant by the State.

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obligations and duties imposed upon it by this Agreed Final Judgment, and it consents to its entry without further notice, and avers that no offer, agreements or inducements of any nature whatsoever have been made to it by the Plaintiff or their attorneys or any employee of the Attorney General's Office to procure this Agreed Final Judgment.

Defendant denies any wrongdoing in the conduct of its business. This Agreed Final Judgment does not constitute an admission of guilt or liability on the part of the Defendant, but merely resolves by agreement the State of Tennessee's substantial legitimate concerns about the Defendant's compliance with the Tennessee Consumer Protection Act and other applicable law as described in the State's Complaint.

This Agreed Final Judgment shall bind Defendant and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest to Defendant.

Defendant has, by signature of its counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with any judicial proceedings upon this Judgment.

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Order, including the enforcement of compliance therewith and penalties for violation thereof. Defendant agrees to pay all court costs and attorneys' fees associated with any petitions to enforce any provision of this Order against Defendant.

2. VENUE

2.1 Venue is proper in the Circuit Court of Shelby County, Tennessee.

3. PARTIES

3.1 Defendant warrants and represents that it is the proper party to this Order.

Defendant further acknowledges that it understands that the State expressly relies upon this representation and warranty, and that if it is false, unfair, deceptive, misleading or inaccurate, the State has the right to move to vacate or set aside this Order, or request that Defendant be held in contempt, if the State so elects.

3.2 Defendant, La Vista, LLC, a Tennessee Limited Liability Company, d/b/a La Quinta, represents that it is the true legal name of the entity entering into this Order. The Defendant understands that the State expressly relies upon this representation and if said representation is false, inaccurate, deceptive, unfair or misleading, the State has the right to move to vacate or set aside this Order or request that the Defendant be held in contempt, if the State so elects.

4. DEFINITIONS

As used in this Agreed Final Judgment, the following words or terms shall have the following meanings:

4.1 “Agreed Final Judgment”, “Judgment” or “Order” shall refer to this document entitled Agreed Final Judgment in the matter of *State of Tennessee v. La Vista, LLC, a Tennessee Limited Liability Company, d/b/a La Quinta*.

4.2 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

- 4.3 “Clear and Conspicuous” or “Clearly and Conspicuously”: A statement is “Clear and Conspicuous” or “Clearly and Conspicuously” disclosed if, by whatever medium, it is readily understandable and presented in such size, color, contrast, location, and audibility, compared to other information with which it is presented, that is readily apparent to the person to whom it is disclosed. If such statement is necessary as a modification, explanation or clarification to other information with which it is presented, it must be presented in close proximity to the information it modifies, in a manner which is readily noticeable and understandable. Further, a disclosure of information is not clear and conspicuous if, among other things, it is obscured by the background against which it appears or there are other distracting elements. Warnings, safety disclosures or statements of limitation must be set out in close conjunction with the benefits described, or with appropriate captions, of such prominence that warnings, safety disclosures or statements of limitation are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading.
- 4.4 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 4.5 “Defendant” shall refer to La Vista, LLC, a Tennessee Limited Liability Company, d/b/a La Quinta and/or any and all officers, owners, employees, agents and representatives of La Vista, LLC, a Tennessee Limited Liability Company, d/b/a La Quinta.
- 4.6 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq* and as amended from time to time.

5. APPLICATION OF ORDER TO DEFENDANT AND ITS SUCCESSORS

5.1 Defendant agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Order shall apply to Defendant, to each of its officers, directors, partners, subsidiaries, affiliates, managers, parents, related entities, agents, assigns, representatives, employees, successors, sales staff and any and all other persons or entities acting directly or indirectly on its behalf.

6. PERMANENT INJUNCTION AND REHABILITATION

Accordingly, it is hereby agreed by the Defendant that immediately upon the entry of this Order, pursuant to Tenn. Code Ann. § 47-18-108(b)(2), Defendant and anyone in concert with it, shall be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices set forth herein and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

6.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of its business. Defendant shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.*, including but not limited to § 47-18-104(b)(27), which prohibits any and all unfair and/or deceptive acts or practices, and § 47-18-104(b)(34), which prohibits persons from unreasonably raising prices on essential goods, commodities, or services in direct response to a crime, act of terrorism, war, or natural disaster.

6.2 Defendant shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Defendant.

6.3 Defendant shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Defendant have been approved, in whole or in part, by the State.

6.4 Defendant shall be prohibited from unreasonably raising prices of essential goods, commodities or services, specifically hotel room rates and related charges, in direct response to a natural disaster, regardless of whether such natural disaster occurred in the state of Tennessee.

6.5 Defendant shall be prohibited from not honoring any promoted discount program such as but not limited to AAA, AARP and governmental discounts during a natural disaster, regardless of whether such natural disaster occurred in the State of Tennessee.

7. RESTITUTION

7.1 Defendant has provided an alphabetical list of the names, addresses and telephone numbers of each consumer who lodged at the hotel between August 27, 2005 and September 2, 2005 which is the time period at issue in this Order. The Defendant understands that the State and the Court expressly relies upon the accuracy, truthfulness and correctness of the provided list and if said list contains inaccurate, incomplete, false, deceptive, unfair, incorrect and/or misleading information, the State has the right to move to vacate or set aside this Order or request that Defendant be held in contempt, if the State so elects. The list is attached as Exhibit A to this Order. The court filed version of Exhibit A has been redacted to reflect only the last name of the consumer and the city and state of the consumer and the amount to be paid in restitution. The redaction of the full name and address is to protect each consumer's privacy and to prevent identity theft or other improper use of the information. However, Defendant has provided the State with an Exhibit A list with full names, addresses and telephone numbers of each consumer and amount to be paid in restitution.

7.2 Defendant shall make restitution in the total amount of \$ 6,137.30. Individual consumers shall receive their portion of this total as indicated on Exhibit A.

7.3 Consumers listed on Exhibit A shall be sent a check to the address provided by the consumer in the hotel's computer database. Consumer refunds shall be by check drawn on an account with sufficient cash balance to fund all refunds and shall not consist of credits or

discounts. All consumer refunds shall be mailed by certified, first class United States postage paid mail within six (6) weeks of the entry of this judgment along with a copy of the letter attached as Exhibit B from the Attorney General's Office.

7.4 The refund check sent pursuant to paragraph 7.3 shall be mailed via certified, first class mail postage paid through the United States Postal Service. All envelopes will be chosen at the sole discretion of the Attorney General and must be clearly marked "POSTMASTER: ADDRESS CORRECTION REQUESTED." In the event any envelope is returned with a corrected or forwarding address, Defendant shall again mail the full package to the consumer via certified, first class postage paid mail through the United States Postal Service to the correct address. The Attorney General shall receive written notification of the name, corrected address and date of mailing the second notification to any consumer within five (5) days of mailing the second notice.

7.5 In the event the Defendant is unable to locate consumers entitled to a refund, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date of one (1) year set forth in Tenn. Code Ann. § 66-29-110, covering unclaimed property held by courts, public officers and agencies. The Defendant shall provide a report to the Attorney General within six (6) months of the entry of the Order which details the amount delivered to the Treasurer for treatment as unclaimed property under the State statute. The Defendant shall continue to provide this information every six (6) months until all funds have been claimed and/or delivered to the Treasurer as unclaimed property.

7.6 The following unique situations shall be handled as identified when Defendant issues restitution checks to consumers:

- (a) If a consumer who is eligible for restitution is now deceased, the restitution payment shall be made to the estate of the deceased person.
- (b) If the purchase was made by a minor, the restitution check shall be made jointly payable to the minor child's parents or legal guardians. If the child is in the sole custody of one parent or only has one parent or one legal guardian, the restitution check shall be made payable to the sole custodian parent or single parent.
- (c) If the purchase was made by a married couple which are now divorced, a single restitution check shall be made jointly payable to both the former husband and former wife. Unless a protective order is in place relating to one of the parties, in that situation, two checks shall be issued, half to each former spouse.
- (d) If the purchase was made jointly by two or more unrelated persons, a single restitution check shall be made jointly payable to those persons.

7.7 The Defendant is responsible for all costs associated with the refund process set forth in subsection 7, including but not limited to, all costs associated with the mailing and content of the packet of materials discussed, all letterhead, envelopes, copying charges, postage and costs associated with the issuance of refund checks.

7.8 Within six (6) months of entry of this Order, the Defendant shall file with the Attorney General the following information:

- A. A report of all monies refunded to individuals. Such report shall verify and certify that eligible consumers listed on Exhibit A received the required amount of restitution. Additionally, the Defendant shall verify and certify compliance with each provision of this Order with respect to refunds. Such reports shall be supplemented as needed.
- B. An alphabetical list of the name and address of each consumer who received a refund, the address where the check was successfully sent, the amount of each individual consumer's refund and the total amount of all refunds provided. Such reports shall be supplemented as needed.

- C. An acknowledgment that each officer, director or employee of Defendant has received a copy of this Order and has certified to having read it.

7.9 Within ten (10) days of receipt of a request from the Division of Consumer Affairs for evidence that a specific consumer or consumers have received the required refunds, Defendant shall provide written verification by providing any documents, books and records necessary to establish to the satisfaction of the Director of the Division of Consumer Affairs that the refund process was completed in compliance with this Order. Such documents shall include, but not be limited to, copies of the front and back of canceled checks and/or mailing records along with certified mail receipts indicating that the specific consumer or consumers received the required item. The documents, books or records shall be physically turned over and provided to the Offices of the Division of Consumer Affairs no later than ten (10) days from receipt of such request. This paragraph shall in no way limit the Attorney General's option to obtain documents, records and/or testimony pursuant to this paragraph or any other law, regulation or rule.

8. ATTORNEYS' FEES AND COSTS TO THE STATE

8.1 Defendant shall pay the sum of One Thousand Dollars (\$ 1,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing a certified or cashier's check made payable to the "Treasurer, State of Tennessee - Attorney General" and shall be delivered to the Attorney General on the day of execution of this Order.

9. CIVIL PENALTIES

9.1 Defendant shall pay the sum of Seven Thousand Dollars (\$ 7,000.00) to the State of Tennessee as a civil penalty for the Defendant's acts and/or practices described. Said payment shall be made immediately upon execution of this Order by providing the Attorney General with a certified check made payable to the "Treasurer, State of Tennessee - Civil Penalties".

10. GENERAL PROVISIONS

10.1 The acceptance of this Order by the State shall not be deemed approval by the State of any of Defendant's advertising or business practices. Further, neither Defendant nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Commerce and Insurance, the Division of Consumer Affairs or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Defendant.

10.2 This Order may only be enforced by the parties hereto.

10.3 The titles and headers to each section of this Order are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Order.

10.4 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

10.5 Nothing in this Order shall limit the Attorney General's right to obtain information, documents or testimony from Defendant pursuant to any state or federal law, regulation or rule.

10.6 Nothing in this Order shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Order shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Defendant.

10.7 No waiver, modification, or amendment of the terms of this Order shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

10.8 Any failure by any party to this Order to insist upon the strict performance by any other party of any of the provisions of this Order shall not be deemed a waiver of any of the provisions of this Order, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Order and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

10.9 If any clause, provision or section of this Order shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Order and this Order shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

10.10 Defendant waives any and all challenges in law or equity to the entry of the Order by the courts. Further, Defendant has waived any right to appeal, petition for *certiorari*, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Order.

10.11 This Order sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Order which are not fully expressed herein or attached hereto.

10.12 Nothing in this Order shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

10.13 This Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Complaint. This Order is limited to resolving only matters set forth in the State's Complaint.

10.14 Defendant will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Order or for any other purpose which would otherwise circumvent any part of this Order or the spirit or purposes of this order.

10.15 Defendant hereby expressly waives and relinquishes any and all rights, remedies, appeals or other interests that it may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

11. REPRESENTATIONS AND WARRANTIES

11.1 Defendant represents and warrants that the execution and delivery of this Order is its free and voluntary act, that this Order is the result of good faith negotiations, and that

Defendant agrees that the Order and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Order in good faith.

11.2 Defendant represents and warrants that signatories to this Order have authority to act for and bind the Defendant.

12. COMPLIANCE WITH ALL LAWS

12.1 Nothing in this Order shall be construed as relieving the Defendant of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Order be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

13. MONITORING FOR COMPLIANCE

13.1 Upon request, Defendant shall provide books, records or documents to the State at any time, and further, to informally, or formally under oath, provide testimony or other information to the State relating to compliance with this Order. Defendant shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at such other location within the State of Tennessee as is mutually agreeable in writing to Defendant and the Attorney General. This shall in no way limit the State's right to obtain documents, records, testimony or other information pursuant to any law, regulation, or rule.

13.2 Within thirty (30) days of the entry of this Order, Defendant shall submit a copy of this Order to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Defendant as an agent or independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this

Order, Defendant shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Order.

13.3 The State of Tennessee has the right to test shop Defendant for the purpose of confirming compliance with this Order and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendant. Further, the State of Tennessee may record any or all aspects of its solicitations or visit(s) with Defendant in audio or video form without notice to Defendant. The Defendant agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

14. PRIVATE RIGHT OF ACTION

14.1 Nothing in this Order shall be construed to affect any private right of action that a consumer may hold against Defendant.

15. NOTIFICATION TO STATE

15.1 For five (5) years following execution of this Order, Defendant shall notify the Attorney General, c/o Consumer Advocate & Protection Division, Post Office Box 20207, Nashville, Tennessee 37202-0207, in writing at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Defendant's status that may effect compliance with obligations arising out of this Judgment.

15.2 Any notices required to be sent to the State or the Defendant by this Order shall be sent by United States mail, certified mail return receipt requested or other nationally

recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202
Telephone: (615) 741-1671

For the Defendant:

16. PAYMENT OF COURT COSTS

16.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendant. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

IT IS SO ORDERED, ADJUDGED AND DECREED.

JUDGE

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE OF TENNESSEE

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APPROVED BY:

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